

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JOSHUA VAUGHAN,)	
Plaintiff,)	
)	
vs.)	No. 2:10-cv-276-wks
)	Jury Trial Demanded
VERMONT LAW SCHOOL, INC., and)	
SHIRLEY JEFFERSON,)	
Defendants.)	

PLAINTIFF'S MOTION FOR CONDITIONAL DISMISSAL OF ALL CLAIMS
WITHOUT PREJUDICE *IF, BUT ONLY IF*, PLAINTIFF IS SUCCESSFUL ON APPEAL

Plaintiff, Joshua Vaughan ("Vaughan"), respectfully moves the court to dismiss all of his claims, with such dismissal being without prejudice to re-filing them *if, but only if*, he obtains a reversal, revision or vacation on appeal; and otherwise, with prejudice.

In support of this motion plaintiff submits the following memorandum.

MEMORANDUM

This court's ruling dated August 4, 2011 (Document 82) addressed fundamental, central issues in the case, and decided them adversely to plaintiff. Its ruling dated September 12, 2011 (Document 90) reaffirmed those rulings.

Plaintiff advises the court that those rulings make his remaining claims unviable and effectively terminates the lawsuit because plaintiff is not prepared to continue, and cannot effectively proceed, on the principles outlined by the court in those orders.

Plaintiff requests that the court dismiss all his remaining claims, with such dismissal being without prejudice to re-filing them *if, but only if*, he is obtains a reversal, revision or vacation of the rulings on appeal. Plaintiff fully understands that if he fails to obtain a reversal, revision or vacation of the orders the dismissal will become with prejudice and he will be barred from reasserting his claims. Plaintiff is not otherwise agreeing with the

termination of the dispute, and he is making this request solely to advance the issues determined in the order for expeditious appellate review.¹

This approach has been endorsed by the Supreme Court, the Second Circuit, and other courts. See, e.g., United States v. Proctor & Gamble Co., 356 U.S. 677, 679-80 (1959), Securities and Exchange Commission v. Gabelli, -- F. 3d --; 2011 WL 3250556 at *5 (2d Cir. Aug. 1, 2011); ABN Amro Verzekeringen BV v. Geologistics Americas, Inc., 485 F. 3d 85, 92-93 (2007); Rabbi Jacob Joseph School v. Province of Mendoza, 425 F. 3d 207, 210 (2d Cir. 2005); Purdy v. Zeldes, 337 F. 3d 253, 257-58 (2d Cir. 2003); Raceway Properties, Inc. v. Emprise Corporation, 613 F. 2d 656, 657 (6th Cir. 1980).

The court has authority to make such a dismissal under FRCP 41(a)(2), which authorizes dismissal “on terms that the court considers proper.” Here, defendants’ legitimate interests would be protected by the fact that the dismissal would become *with prejudice*, and the litigation would end, if plaintiff does not obtain a reversal, revision or vacation on appeal.

WHEREFORE, plaintiff respectfully requests that the court dismiss all of his claims, with such dismissal being without prejudice to re-filing them *if, but only if*, he obtains a reversal, revision or vacation on appeal.

¹ Any other approach would be a waste of the court’s and the parties’ resources and might constitute a violation of FRCP 11.

Date: September 14, 2011

JOSHUA VAUGHAN,
Plaintiff,

/s/ W. E. Whittington
W.E. Whittington

W. E. Whittington (Bar No. 000520396)
Whittington Law Associates, PLLC
35 South Main Street
Hanover, NH 03755
(603) 643-2755
ned@whittington-law.com

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2011, I served the foregoing pleading on the following counsel of record, by causing it to be filed electronically via the CM/ECF filing system, on the following counsel of record:

Karen McAndrew, Esq.
Sophie E. Zdatny, Esq.
Dinse, Knapp & McAndrew, P.C.
209 Battery St.
Burlington, VT 05401

kmcandrew@dinse.com
szdatney@dinse.com

/s/ W. E. Whittington
W.E. Whittington